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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/693,700

Filing Date: October 24, 2003

Appellant(s): SANDBERG ET AL.

Eric B. Meyertons
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/9/09 appealing from the Office action
mailed 8/18/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

U.S. Pat. Appl. No. 10/693,816

U.S. Pat. Appl. No. 10/693,820

U.S. Pat. Appl. No. 10/693,840

U.S. Pat. Appl. No. 11/112,881

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 4,716,960	Eastlund et al	01-1988
US 5,065,818	Van Egmond	11-1991
US 4,382,469	Bell et al	05-1983
EP 0 130 671	Rose	01-1985

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1691-1694, 1696-1713, 1715-1732 and 1734-1749 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eastlund et al (US 4,716,960) in view of Eastlund et al (US 4,716,960) in view of Van Egmond (US 5,065,818) or Bell et al (US 4,382,469), and Rose (EP 0130671).

Eastlund shows the system claimed including a heater well extending into a hydrocarbon formation, a heating element located in the heater well and transfer heat from the heating element to hydrocarbons such the paraffin deposited in the heater well, an AC supply with a voltage above about 200 volts with the frequency below 100 kHz. Eastlund further shows the heating element having a copper inner core with a steel outer conductor, but it does not explicitly disclose an overburden formation and that the steel outer conductor is ferromagnetic.

Van Egmond or Bell shows that it is well known in the art that a heater well is provided through an overburden formation and into zones for heating or carbonizing the

hydrocarbon containing zones. Bell further shows that it is also well known in the art to employ the in-situ process.

Rose shows a heating element having an inner core made of copper with an outer conductor made of a resistive ferromagnetic carbon steel which allows the heating element to be self-regulating. Rose further discloses that its heating element is configured such that the heater automatically reduces its heat output near or above a selected temperature including the Curie temperature of about 760 °C.

In view of Van Egmond or Bell, and Rose, it would have been obvious to one of ordinary skill in the art to adapt Eastlund with the heater well that extends through an overburden formation and into the hydrocarbon containing formation at least about 10 m or more to effectively heat such hydrocarbon containing layer and provide the heating element as shown in Rose to provide a self-regulating heating element to more conveniently maintain a desired heating temperature. And in view of Bell, it would also have been obvious to one of ordinary skill in the art to employ the in-situ process for processing the hydrocarbons as alternative and additional means for heating.

Regarding the recited selected temperature that is "within about 50 °C of the Curie temperature of the ferromagnetic material" fully reads on Rose since the selected temperature disclosed in EP130671 (i.e., the Curie temperature) falls within the claimed range.

Regarding the recited ferromagnetic material, Rose discloses a number of different iron-nickel alloys with varying Curie temperatures suitable as ferromagnetic materials for autoregulating electric heaters. See P. 14, Table I (noting that iron-nickel

alloys have relatively lower Curie temperatures compared to other ferromagnetic materials).

Regarding the recited skin depth, see P. 9, lines 24-26 of Rose.

Regarding the recited conductor length, see P. 6, lines 24-28 of Rose.

Regarding the controlling of the skin depth and the frequency, because (1) the heater of Rose utilizes the skin effect of the conductor to ultimately dictate its heating, (2) the inverse relationship between frequency and skin depth is well known (see P. 2, lines 11-28), and (3) a wide frequency range of 50 Hz - 10 KHZ is envisioned (see P. 8, line 19-23), the heater of Rose would inherently control the skin depth in the conductor by varying the applied frequency.

Regarding the recited values of the amps or current, the reduced heat above or near the selected temperature and the turndown ratio, since no criticality is seen in these specific values and since such specific values claim optimized result-effective variables, it would have been obvious to one of ordinary skill in the art to include such values in operating the heating system as being well within the scope of routine experimentation by skilled artisans depending on the desired temperature and heat output. It is well settled that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233,235 (CCPA 1955).

Claims 1691-1694, 1696-1713, 1715-1732 and 1734-1749 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being

unpatentable over claims 1691-1753 of copending Application No. 10/693,820 and claims 1691-1759 of copending Application No. 10/693,840. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending claims shows the all the recited elements of the pending claims except for the frequency and the selected temperature but since such selection of the frequency and the temperature values are optimized result-effective variables, it would have been obvious to one of ordinary skill in the art to include such values in operating the heating system as being well within the scope of routine experimentation by skilled artisans depending on the desired temperature and heat output. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

(10) Response to Argument

With respect to Eastlund, the appellant argues that Eastlund only teaches the heating of fluids such as hydrocarbons that have already been mobilized through the perforations (12, 113) in the well tubing and does not show heating of the hydrocarbons before they enter into the well tubing. The appellant also argues a fluid layer that contains hydrocarbon as shown in Eastlund is not the same as the recited hydrocarbon containing layer formation, i.e., the appellant's specification states that the underground formations have different layers in them and that some of these layers do not contain hydrocarbon. This argument is not deemed persuasive since Eastlund clearly shows a heater provided in a heater well tubing wherein the heater well tubing extends into a layer formation wherein the fluid is admitted through the perforations (12, 113), and

Eastlund clearly teaches for heating of the hydrocarbons in the well tubing. As stated in the ground of rejection, while Eastlund does not explicitly recite an overburden layer, but it is noted that the Van Egmond and Bell references are alternatively applied to show a well known overburden formation through which a heater well tubing extends into a layer that contains the hydrocarbon.

The appellant argues that Eastlund only teaches the heating of fluids such as hydrocarbons that have already been mobilized through the perforations (12, 113) in the well tubing and not heating and mobilizing the hydrocarbons before they enter the well tubing, but this argument is not deemed persuasive in view of the combined teaching of Eastlund in view of Van Egmond and Bell which clearly show a heater well tubing that extends into the hydrocarbon containing layer through an overburden layer wherein the hydrocarbons are heated and thus mobilized. The appellant argues that Eastlund shows no portion of the heaters is even proximate to a hydrocarbon containing layer, but it is noted that Van Egmond further shows a heater cable (9, 10) that extends into the hydrocarbon containing layer formation as well as Bell which shows a conductive element 23 provided in the carbonaceous material layer where heat is provided through the conductive element 23. The appellant argues that since Eastlund teaches of providing more heat in the upper level of the well, no heat is needed or provided in the lower portion of the well tubing as illustrated in Figures 1 and 7A wherein the bottom of the heater is shown to be distantly separated from the perforations 12 in view of the "long break lines" in Figures 1 and 7A. This argument is not deemed persuasive since it

is noted that the drawing figures are for illustrated purposes, and the sizes and dimensions of the drawing figures are not in scale.

Contrary to the appellant's argument, Eastlund does not show or teach that no heat is needed in the lower portion of the well. For example, Figure 5A in Eastlund illustrates a sinker (59) that is provided in close proximate to the perforations 56 where hydrocarbons are admitted there into, and based on this showing, a sinker (115) in Figure 7A could be provided proximate to the perforations 113 wherein the heater (106) which is connected to the sinker (115) would be positioned proximate to the perforations thereto where there is a hydrocarbon containing layer formation. The appellant also argues that there is no motivation to combine with Eastlund and Van Egmond since Van Egmond appears to destroy the intent and purposes of Eastlund. The appellant argues Eastlund is shown to provide heating in the upper portions with no heating in the hydrocarbon containing layer whereas Van Egmond is shown to provide a significant heating in the hydrocarbon containing layer formation as shown as the zone 2 in Figure 1. This argument is not deemed persuasive since Eastlund also teaches for providing a heat at different selected depths of the well. Such disclosure does not support the appellant's statement that no heating is provided in the lower portion including in the hydrocarbon containing layer.

With respect to Bell, the appellant argues that Bell shows applying a DC to an anode and a cathode of the conductive elements (23, 41) and that Bell does not show a resistive heating of the heater. It is noted that Bell is applied show a well known well tubing that extends through an overburden into a hydrocarbon containing layer

formation wherein Bell further shows mobilizing hydrocarbons including the in situ production of the gas wherein a heat is produced in the formations via the electrical current (column 1, lines 56-60).

With respect to Rose, the appellant argues Bell teaches away the invention of Rose since Bell shows the use of DC power supply rather than an AC supply. It is noted Eastlund shows an AC power wherein Bell is applied to shows a well known a well bore tubing that is shown to extend through an overburden. The appellant further argues there is no motivation to combine Rose and Eastlund since Rose only teaches heating fluids inside of a device and that Rose does not show or teach transferring heat to a hydrocarbon containing layer. It is noted, however, that Rose is applied to teach a known electrical heating element having the ferromagnetic sections and its advantageous use in the heating cable (106) of Eastlund (also see Figures 7-10). As stated in the ground of rejection, while Eastlund shows an outer conductor made of steel, it does not call such steel conductor as a ferromagnetic, but Rose shows an outer conductor comprising steel as a ferromagnetic material. Furthermore, Rose shows a known electrical heater having an inner conductor with an outer ferromagnetic conductor and its operating schemes including the auto-regulating of the heating temperatures. To one of ordinary skill in the art, it would have been obvious to modify the heater of Eastlund having an auto-regulating heater as shown in Rose since they are in the same field of endeavor which is in the field of utilizing an electrical heater and for heating a fluid or liquid involving an extensively long distance. The appellant argues that modifying the Eastlund device to operate at or near the Curie temperatures

described by Rose would teach away the Eastlund device, but this argument is not deemed persuasive since Rose is applied to show the use of ferromagnetic conductor in use with a conductor, including a low resistance copper, as done in the appellant's invention, and the controlling of the temperatures would have been obvious as a routine experimentation to achieve a desired temperature. The appellant argues that if the Eastlund device were to operate at the Curie temperature as taught by Rose, an electrical current would flow the entirety of the heater with a significant current along the outer wall of the well tubing which would be contrary to the desired maximum current flow primarily along the inner wall of the tubing in Eastlund. This argument is not deemed persuasive since the appellant's argument is based on the embodiment shown in Figure 5 of Eastlund while the teaching of Rose is applied to modify the heater (106) of Eastlund as shown in the embodiment illustrated in Figure 12 where the system does not require providing current to the well tubing (see column 12, lines 37-47). Thus, the appellant's arguments are not deemed persuasive.

All claims are deemed taught and obvious by the applied prior art as stated in the ground of the rejections.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/SANG Y PAIK/

Primary Examiner, Art Unit 3742

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/TU B HOANG/

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